

Panaji, 21st June, 1984 (Jyaisitha 31, 1906)

SERIES I No. 12

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA, DAMAN AND DIU

### GOVERNMENT OF GOA, DAMAN AND DIU

Law Department (Establishment)

#### Notification by the High Court of Judicature at Bombay

No. P.0102/77

(For insertion in the Government of India Gazette for Goa, Daman and Diu)

The Honourable the Chief Justice and Judges of the High Court of Judicature at Bombay in exercise of the powers conferred by Section 122 of the Code of Civil Procedure (V of 1908) propose to make the following amendments to Schedule I of the Code of Civil Procedure in its application to the Union Territory of Goa, Daman and Diu which are published for the information of persons likely to be affected thereby, and notice is hereby given that the said amendments will be taken into consideration by the Honourable the Chief Justice and Judges on or before 31st July 1984.

Any objection or suggestion which may be sent to the Registrar, High Court, Appellate Side, Bombay by any person in respect to the said amendments before the aforesaid date shall be considered: —

#### Order III

(1) *Substitute* the following Explanation for the existing Explanation below sub-rule (2) of rule 4 in Order III: —

*“Explanation. — For the purposes of this sub-rule, the following shall be deemed to be proceeding in the suit.”*

#### Order IV

(1) *Substitute* the following as rule 1 for the existing rule 1 of Order IV and marginal note: —

“1. (a) Every suit shall be instituted by presenting a plaint to the Court or such Officer as it appoints in this behalf.

(b) The plaintiff shall, except in the Bombay City Civil Court, file as many true copies on plain paper of the plaint with annexures as there are defendants, for service with the summons upon

the defendants, unless the Court by reason of the length of the plaint or the number of defendants or for any other sufficient reason permits him to present a like number of concise statements of the nature of the claim made or of the relief claimed in the suit in which case, he shall present such statements. Such copies or statements shall be filed along with the plaint unless the Court, for good cause shown, allows time for filing such copies or statements.

2. Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or the defendant sues or is sued.

3. The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

4. The fee, chargeable for service of the summons upon the defendants, shall be paid when the plaint is filed or within such time as may be extended by the Court.

5. Every plaint shall comply with the rules contained in Orders VI and VII so far as they are applicable.”

#### Order V

(1) In Order V for the existing rule 2 and its marginal note *substitute* the following: —

2. Every summons, except in the case of one issued by the City Civil Court, shall be accompanied by a copy of the plaint with annexures, or if so permitted, by concise statement.

(2) In Order V, for the existing rule 4 *substitute* the following: —

“4. No party shall be ordered to appear in person unless he resides —

(a) within the local limits of the Court's Ordinary Original jurisdiction, or

(b) without such limits but at a place less than 100 or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the court is situate), less than five hundred kilometres distance from the court house.”

(3) In Order V, for the existing rule 5 and its marginal note, *substitute* the following as rule 5 and marginal note: —

5. The Court shall determine at the time of issuing the summons whether it shall be for the filing of written statement and the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that in every suit heard by a Court of Small Causes the summons shall be for final disposal of the suit.

(4) In Order V, for the existing rule 15 and its marginal note, *substitute* the following as rule 15 and marginal note: —

15. When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

*Explanation.* — A servant is not a member of the family within the meaning of this rule.

(5) In Order V, in sub-rule (1) of rule 19A —

(i) for the word "shall" the word "may" shall be substituted;

(ii) the proviso shall be deleted.

(6) In Order V, for the existing rule 27 and its marginal note, *substitute* the following as rule 27 and marginal note: —

27. Where the defendant is a public officer not belonging to the Indian Military, Naval or Air Service on Civil Forces, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it by registered post pre-paid for acknowledgement for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

(7) In Order V, for the existing rule 28 and its marginal note, *substitute* the following as rule 28 and marginal note: —

28. Where the defendant is a soldier, sailor or airman the Court shall send by registered post pre-paid for acknowledgement the summons for service to his commanding office together with a copy to be retained by the defendant.

#### Order VI

(1) In Order VI, for the existing rule 5 and its marginal note, *substitute* the following as rule 5 and marginal note: —

5. (1) A further and better statement of the nature of the claim or defence, or further and better particu-

ment or particulars.

lars of any matter stated in any pleading may in all cases be ordered upon such terms, as to costs and otherwise, as may be just.

(2) No application for further and better particulars from the plaintiff or the defendant except the one given by the defendant on or before the returnable date of the summons or by the plaintiff on or before the first date fixed for hearing after the filing of the written statement, shall be entertained, unless the plaintiff or the defendant assigns good cause for the same.

(3) After filing the written statement, the Court shall fix a date for (i) reception of documents other than those in possession or power of parties, and (ii) applications for interrogatories, discovery of documents and the inspection thereof. Such applications should not be entertained thereafter, unless good cause is shown to the satisfaction of the Court.

(2) *Substitute* the following sub-rules (1) to (4) for existing sub-rules (1) to (4) of Rule 14-A of Order VI: —

14-A. (1) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party. Parties subsequently added shall immediately on being so added file a memorandum in writing of this nature.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition. Notice of such change shall be given to such other parties as the Court may deem it necessary and the form showing the change may be served either on the pleaders or such parties or be sent to them by registered post pre-paid for acknowledgement as the Court thinks fit.

(3) The address furnished in the statement made under sub-rule (1) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of six years after the final determination of the cause or matter.

(4) (i) Where a party is not found at the registered address and no agent or adult male member of his family, on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post pre-paid for acknowledgement (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(ii) Where a party engages a pleader, notice or process issued against the party shall be served in the manner prescribed by Order III, rule 5, unless the Court directs service at the registered address of the party.

(5) Where the registered address of a party is not filed within the specified time or is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order —

(a) in case where the default in furnishing registered address is by the plaintiff or where such registered address was furnished by a plaintiff, rejection of the plaint, or

(b) in case where the default in furnishing registered address is by the defendant or where such registered address was furnished by a defendant, his defence is struck out and he be placed in the same position as if he had not put any defence.

(6) Where a plaint is rejected or defence is struck out under sub-rule (5), the plaintiff or as the case may be the defendant after furnishing his true address, apply to the Court for an order to set aside the rejection of the plaint or as the case may be, the orders striking out the defence.

(7) The Court is satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the rejection of the plaint or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence as the case may be.

(8) Where a party is not found at the registered address and no agent or adult member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house. If on the date fixed such party is not present, another date shall be fixed and a copy of the notice, summons or other process shall be sent to the registered address of that party by registered post prepaid for acknowledgement (which pre-payment shall be made within one month from the date originally fixed for hearing) and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(9) Where the Court has struck out the defences under sub-rule 5 and has consequently passed a decree or an order, the defendant or the opposite party as the case may be, may apply to the Court by which the decree or order was passed for an order setting aside the decree or order and if he files a registered address and satisfies the Court that he was prevented by any sufficient cause from filing the address, the Court shall make an order setting aside the decree or order against him upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or proceeding, provided that where the decree or order is of such a nature that it cannot be set aside as against such defendant or opposite party only, it may set aside as against all or any of the defendants or opposite party.

(10) Nothing in this rule shall prevent the Court from directing service of a process at any other address, if for any reason it thinks fit to do so.

(11) Where a party engages a pleader, a notice or process issued against the party shall be served in the manner prescribed by Order III, rule 5 unless the Court directs service at the registered address of the party.

(2) In Order VI, rule 15, *substitute* a colon for the full stop at the end of sub-rule (1) and add thereafter the following proviso: —

Provided that in respect of pleadings to be filed in the Bombay City Civil Court such verification shall, within the local jurisdiction of the Court, be made before one of the officers of the said Court empowered to administer oath, and elsewhere, before any officer mentioned in section 139 of the Code of Civil Procedure, 1908.

(3) In Order VI, for the existing rule 17 and its marginal note, *substitute* the following as rule 17 and marginal note: —

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Where, however, an application for amendment is made by the plaintiff in a suit in which the defendant has not appeared, though served with a summons, and where in the opinion of the Court the amendment applied for is material one, the Court shall give notice of the application to the defendant before allowing the amendment; and where in the absence of the defendant the court grants any amendment in a form materially different from that of which notice has been given to the defendant, a copy of the amended plaint shall be served on the defendant.

#### Order VII

(1) In Order VII, rule 1, for the existing item (i) of particulars, *substitute* the following as item (i): —

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court-fees, so far as the case admits, showing the provisions of law under which the valuation for Court-fees and jurisdiction is separately made.

(2) In Order VII, for the existing rule 3 and its marginal note, *substitute* the following as rule 3 and marginal note: —

3. Where the subject-matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaintiff shall specify such boundaries or numbers. In case of encroachment a sketch showing as approximately as possible the location and extent of the encroachment shall also be filed alongwith the plaint.

(3) In Order VII, for the existing rule 9 and its marginal notes, *substitute* the following as rule 9 and marginal note: —

9. (1) The plaintiff shall endorse on the plaint Chief Ministerial Officer to sign lists and copies produced along with plaint. or annex thereto a list of documents (if any) which he has produced along with it.

(2) The Chief Ministerial Officer of the Court shall sign such lists and the copies of the plaint with annexures presented under rule 1 of Order IV, if on examination he finds them to be correct.

(4) In Order VII, rule 10 for the existing sub-rule (1) and its marginal note *substitute* the following as sub-rule (1) and marginal note: —

(1) Subject to the provisions of rule 10A, the plaint shall Return of plaint at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. The plaintiff or his pleader shall be informed of the date fixed for the return of the plaint.

(5) In Order VII, for the existing rule 13 and its marginal note, *substitute* the following as rule 13 and marginal note: —

13. The rejection of the plaint on any of the grounds hereinbefore mentioned or on the ground mentioned in rule 14-A(5)(a) of Order VI shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

(6) In Order VII, rule 17, *substitute* a colon for the full stop at the end of sub-rule (2) and add thereafter the following provisos:

Provided that where the entry referred to in this rule is in a language other than English or the language of the Court, the plaintiff shall file with the plaint a true copy of the entry together with its translation either in English or in the language of the Court, such translation being verified as regards its correctness by an affidavit of the person making the translation:

Provided further that the Court may accept a plaint without the translation and permit the party to file the said translation within a time to be fixed by the Court.

In either of such cases the Court or its officer need not examine and compare the copy with the original and certify the same to be correct.

#### Order VIII

(1) For the existing title of Order VIII, *substitute* the following title: —

Written Statement, Set-off, Counter-claim, and Third Party Procedure.

(2) In Order VIII, for the existing rule 1 and its marginal note, *substitute* the following as rule 1 and marginal note: —

(1) The defendant may and if so required by the Court shall within such time as may be specified in that behalf or within such ex-

tended time as the Court may permit, present a written statement of his defence, after serving a copy thereof on the plaintiff or his pleader on or before the date fixed for presenting the same in Court, or file in Court for the use of the plaintiff a copy of the written statement while presenting the same in Court:

Provided that the first adjournment for filing the written statement shall not ordinarily exceed four weeks and no further adjournment shall be granted except for reasons to be recorded in writing.

#### Order IX

(1) In Order IX, for the existing rule 13 and its marginal note, *substitute* the following as rule 13 and marginal note: —

13. In any case in which a decree is passed *ex-Setting aside* *-parte* against a defendant, he decree *ex-parte* may apply to the Court by against defendant. which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that there was sufficient cause for his failure to appear when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs payment into Court or otherwise as it think fit, and shall appoint a day for proceeding with two suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also:

Provided also that no such decree shall be set aside merely on the ground of irregularity of service of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim.

*Explanation I.* — Where a summons has been served under Order V, rule 15, on an adult male-member having an interest adverse to that of the defendant in the subject-matter of the suit, it shall not be deemed to have been duly served within the meaning of this rule.

*Explanation II.* — Where there has been an appeal against a decree passed *ex-parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex-parte* decree.

(2) In Order IX, after the rule 14, *add* the following rule with marginal note as new rule 15 and its marginal note:

15. In the application of this Order to appeals, Application of the so far as may be, the word provisions of this 'plaintiff' shall be held to include an appellant, the word Order to Appeals. 'defendant', a respondent, and the word 'suit', and appeal.

**Order XIII**

(1) In Order XIII, rule 4, *substitute* a colon for the full stop at the end of sub-rule (1) and *add* thereafter the following proviso:

Provided that in proceedings in the Bombay City Civil Court, the endorsement may be signed or initialled by such officer as the Principal Judge may authorise in this behalf.

(2) In Order XIII, rule 5, *substitute* a colon for the full stop at the end of sub-rule (3) and *add* thereafter the following proviso:

Provided that where the entry referred to in this rule is in a language other than English or the language of the Court, the provision contained in the proviso to sub-rule (2) of rule 17 of Order VII shall apply *mutatis mutandis* to such an entry.

(3) In Order XIII, rule 6, *substitute* a colon for the full stop at the end of the rule and *add* thereafter the following proviso:

Provided that in proceedings filed in the Bombay City Civil Court the endorsement may be signed by such officer as the Principal Judge may authorise in this behalf.

(4) In Order XIII, rule 7, after the existing sub-rule (2), *add* the following sub-rule with marginal note as new sub-rule (3) and its marginal note:—

(3) Every document produced in evidence which is not written in the Court language or in English shall be accompanied by a correct translation into English or the Court language, and every document which is written in Court language, in a script other than Devanagari shall be accompanied by a correct translation into Devanagari script. If the document is admitted in evidence the opposite party shall either admit the correctness of the translation or the transliteration or submit his own translation or transliteration of the document.

(5) In Order XIII, for the existing rule 9 and its marginal note, *substitute* the following as rule 9 and marginal note:

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of; and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(a) delivers to the proper officer for being substituted for the original,—

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy, which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so:

Provided also that a copy of the decree and of the judgment filed with the memorandum of appeal under Order XII, rule 1, may be returned after the appeal has been disposed of by the Court:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

*Insert as Order XV-A, before Order XVI.*

**Order XV-A****Striking Off Defence in A Suit by A Lessor**

1. (1) In any suit by a lessor for eviction of a lessee or for the recovery of rent and future mense profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination.

**Order XVI**

(1) In Order XVI, rule 2, *substitute* a colon for the full stop appearing at the end of sub-rule (1) and *add* thereafter the following proviso:

Provided that where Government or a public officer being a party to a suit or proceeding as such public officer supported by Government in



the litigation, applies for a summons to any public officer to whom the Civil Service Regulations apply to give evidence of facts which have come to his knowledge or of matters with which he has to deal, as a public officer, or to produce any document from public records, the Government or the aforesaid officer shall not be required to pay any sum of money on account of the travelling and other expenses of such witness.

(2) In Order XVI, rule 3, *substitute* a colon for the full stop appearing at the end of rule 3 and *add* thereafter the following proviso:

Provided that where the witness is a public officer to whom the Civil service Regulations apply and is summoned to give evidence of facts which have come to his notice or of facts which he has had to deal in his official capacity, or to produce a document from public records, the sum payable by the party obtaining the summons on account of his travelling and other expenses shall not be tendered to him. Such officer shall, however, be required to produce a certificate duly signed by the Head of his office showing the rates of travelling and other allowances admissible to him as for a journey on tour.

(3) In Order XVI, after the existing rule 3 (with the proviso last added thereto) *add* the following rule with marginal note as new rule 3A and its marginal note:—

<p>3A. (1) Notwithstanding anything contained in the foregoing rules, in all suits or other proceedings to which the Government is not a party, where a servant of the Central Government or a railway employee is summoned to give evidence and/or to produce documents in his official capacity, the Court shall direct the party applying for summons to deposit such sum of money as will, in the opinion of the Court be sufficient to defray the travelling and other expenses of the officer concerned as for a journey on tour; and on the deposit of such sum, the Court shall direct the summons to be issued and, out of the sum so deposited or out of any further sum which the Court may subsequently direct the party applying for summons to deposit, the Court shall, on the appearance before the Court of the officer summoned, pay him the amount of travelling and other expenses admissible to him as for a journey on tour under the rules applicable to his service.</p>	<p>Special provision for public servants summoned as witnesses in suits in which the Government is not a party.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------

cerned as for a journey on tour; and on the deposit of such sum, the Court shall direct the summons to be issued and, out of the sum so deposited or out of any further sum which the Court may subsequently direct the party applying for summons to deposit, the Court shall, on the appearance before the Court of the officer summoned, pay him the amount of travelling and other expenses admissible to his as for a journey on tour under the rules applicable to his service.

(2) The officer appearing before the Court in accordance with sub-rule (1) shall produce a certificate duly signed by the Head of his office showing the rates of travelling and other allowances admissible to him as for a journey on tour, and the amount payable to him by the Court shall be computed on the basis of rates specified in such certificate.

#### Order XX

(1) O. XX, r. 1(3).—*Delete* the words "if the Judge is specially empowered by the High Court in this behalf" appearing in rule 1(3) of Order XX of the Civil Procedure Code, 1908.

(2) In Order XX, rule 6, for the existing sub-rule (1) and its marginal note, *substitute* the following as sub-rule (1) and marginal note:—

<p>6. (1) The decree shall agree with the judgment; it shall contain the date of presentation of the plaint, the number of the suit, the names and descriptions of the parties, their registered addresses, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.</p>	<p>Contents of decree.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------

(3) In Order XX, rule 7, *substitute* a colon for the full stop appearing at the end of the rule and *add* thereafter the following proviso:

Provided that in proceedings taken in the Bombay City Civil Court the decree shall bear date the day on which the judgment was pronounced and it shall be engrossed in the office of the Registrar and be signed by him and sealed with the seal of the Court.

(4) In Order XX, for the existing rule 12 and its marginal note, *substitute* the following as rule 12 and marginal note:—

<p>12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—</p>	<p>Decree for possession and mesne profits.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during the period prior to the institution of the suit, or directing an enquiry as to such rent or mesne profits;

(c) directing an enquiry as to such rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder, or

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court.

(2) Where an inquiry is directed under clause (b) or clause (c) of sub-rule (1) above, a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such enquiry.

(5) In Order XX, rule 14, *substitute* a colon for the full stop appearing at the end of clause (b) of sub-rule (1) and *add* thereafter the following proviso:

Provided that if there are crops standing on the property, possession of the property shall not be delivered to the plaintiff until such crops have been reaped. The plaintiff shall however be entitled to simple interest not exceeding 6 per cent per annum at the discretion of the Court on the amount deposited by him in Court in respect of the period between the date of payment into Court by him of the purchase money and the costs (if any) and the date on which delivery of possession to him by the defendant takes place.

(6) *Substitute* the following rule for rule 20 in Order XX:—

20. (1) Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

Certified copies of judgment and decree to be furnished.

(2) Application may be made by the party himself or his recognised agent or by his pleader and may also be sent by post. Whenever such application is sent by post the same shall be sent by the Registered post pre-paid for acknowledgment. When the application is sent by post, it shall be deemed to have been made on the date of posting if the application is made by registered post, but only on the date of its receipt by the office of the Court in case when it is sent by post other than registered post.

### Order XXI

(1) *Substitute* the following as sub-rule (2) for the existing sub-rule (2) of rule 2 in Order XXI:

(2) The judgment-debtor or any person who has become surety for judgment-debtor may also inform the Court by an application in writing supported by an affidavit of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause on a date to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(2) In Order XXI, for the existing rule 4 and its marginal note, *substitute* the following as rule 4 and marginal note:—

4. (1) Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provisional Small Causes Court and the Court which passed it wishes it to be executed in Calcutta or Madras, such Court may send to the Court of Small Causes in Calcutta or Madras, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

(2) A decree in a suit of the nature described in sub-rule (1) but in which the value as set forth in the plaint did not exceed ten thousand rupees may be sent for execution to and be executed by the Presidency Court of Small Causes at Bombay in the manner prescribed in sub-rule (1).

(3) In Order XXI, for the existing rule 16 and its marginal note, *substitute* the following as rule 16 and marginal note:—

16. Where decree or if a decree has been passed jointly in favour of two or more persons the interest of any decree-holder in the decree is transferred by

transferee of decree.

assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, or to the Court to which

it has been sent for execution, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferer and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided further that where the transferee Court holds the assignment proved, it shall forthwith communicate its decision in that behalf to the Court which passed the decree, and the latter Court shall make an entry in the Register of Suits indicating that the assignment has been held to be proved:

Provided also that, where the decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

*Explanation-I.*—In an application under this rule, any payment of money made under a decree, or any adjustment in whole or in part of the decree arrived at to the satisfaction of the decree-holder, which payment or adjustment has not been certified or recorded by the Court under rule 2 of this Order, shall not be recognised by the Court entertaining the application.

*Explanation-II.*—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.

(4) *Substitute* the following as rule 24 and its marginal note for the existing rule 24 and marginal note in Order XXI:

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed:

Provided that a Civil Judge, Senior Division may, in his special jurisdiction, send the process to another Court in the same district for execution by the proper officer in that Court.

(3) In every such process a day shall be specified on or before which it shall be executed and day shall also be specified on or before which it

shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.

(5) In Order XXI, rule 25, substitute a colon for the full stop appearing at the end of sub-rule (2) and add thereafter the following proviso:

Provided that an examination of the officer entrusted with the execution of a process by the Nazir or the Deputy Nazir under the general or special orders of the Court shall be deemed to be sufficient compliance with the requirements of this rule.

(6) In Order XXI for rule 39 and its marginal note substitute the following as rule 39 and marginal note:—

39. (1) No Judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court and for the cost of conveyance of the judgment-debtor from the place of his arrest to the Court house.

(2) Where a judgment-debtor is committed to the civil prison execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled according to the scales fixed under section 57, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) Such sum (if any) as the judge thinks sufficient for the subsistence and costs of conveyance of the judgment-debtor for his journey from the Court-house to the civil prison and from the civil prison on his release, to his usual place of residence, together with the first of the payments in advance under sub-rule (3) for such portion of the current month as remains unexpired, shall be paid to the proper officer of the Court before the judgment-debtor is committed to the Civil prison, and the subsequent payment (if any) shall be paid to the officer in charge of the Civil Prison.

(5) Sums disbursed under this rule by the decree-holder for the subsistence and the cost of conveyance (if any) of the judgment-debtor shall be deemed to be cost in the suit:

Provided that the judgment-debtor shall not be detained in the Civil Prison or arrested on account of any sum so disbursed.

(7) In Order XXI, rule 40, after the existing sub-rule (5), and the following as new sub-rules (6), (7) and (8):—

(6) When a judgment-debtor is ordered to be detained in the custody of an officer of a Court

under sub-rule (2) or the proviso to sub-rule (3) above, the Court may direct the decree-holder to deposit such amount as, having regard to the specified or probable length of detention, will provide:

(a) for the subsistence of the judgment-debtor at the rate to which he is entitled under the scales fixed under section 57, and

(b) for the payment to the officer of the Court in whose custody the judgment-debtor is placed or such fees (including lodging charges) in respect thereof as the Court may by order fix:

Provided—

(i) that the subsistence allowance and the fees payable to the officer of the Court shall not be recovered for more than one month at a time, and

(ii) that the Court may from time to time require the decree-holder to deposit such further sums as it deems necessary.

(7) If a decree-holder fails to deposit any sum as required under sub-rule (6) above, the Court may disallow the application and direct the release of the judgment-debtor.

(8) Sums disbursed by the decree-holder under sub-rule (6) shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the Civil Prison or arrested on account of any sum so disbursed.

(8) In Order XXI, after the existing rule 43A, insert the following rule with marginal note as new rule 43B and its marginal note:—

43-B. (1) When an application is made for the attachment of livestock the Court may demand, in advance in cash at rates to be fixed half yearly or oftener, if necessary, by the Courts with the sanction of the District Judge, the amount requisite for the maintenance of the livestock from the probable time of attachment to the probable time of sale, or may, at its discretion, make successive demands for portions of such period. The rates shall include cost of feeding, tending and conveyance, and all other charges requisite for the maintenance and custody of the live-stock.

(2) If the live-stock be entrusted to any person other than the judgment-debtor, the amount paid by the decree-holder for the maintenance of the live-stock or a part thereof, may, at the discretion of the Court, be paid to the custodian of the live-stock for their maintenance. The produce, such as milk, eggs, etc., if any, may either be sold as promptly as possible for benefit of the judgment-debtor or may, at the discretion of the Court, be set off against the costs of maintenance of the live-stock.

(9) In Order XXI, after the existing rule 44, insert the following rule with marginal note as new rule 44-A and its marginal note:—

44-A. Where the property to be attached is Copy of the agricultural produce, a copy of



warrant of attachment to be sent to the Collector where agricultural produce is attached.

the warrant or the order of attachment shall be sent by post to the office of the Collector of the District in which the land is situate.

(10) In Order XXI, rule 45, for the existing sub-rule (1), and its marginal note *substitute* the following as sub-rule (1) and marginal note:—

(1) Where agricultural produce is attached, the Court shall make such arrangement for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of growing crop shall specify the time at which it is likely to be fit to be cut or gathered, and the applicant shall deposit in Court at the time of the application such sum as the Court shall deem sufficient to defray the cost of watching and tending the crop till such time.

(11) In Order XXI, of the Civil Procedure Code, 1908 for the existing rules 46-A to 46-I *substitute* the following rules:—

46-A. (1) Upon the application of the decree-holder, the Court may in the case of,—

(1) any debt (other than a debt secured by a mortgage or a charge or a negotiable instrument) of which the Civil Courts are not precluded from adjudicating upon by any law for the time being in force, and which has been attached under rule 46 of this Order; or

(2) any movable property not in possession of the judgment-debtor which has been attached under rule 46 of this Order; or

(3) any negotiable instrument which has been attached under rule 51 of this Order; or

(4) any movable property of the nature referred to in (1) to (3) above in the custody of any public officer other than officer of any Court, which has been attached under rule 52 of the Order,

issue notice to any person liable to pay to the judgment-debtor such debt or the amount due under such negotiable instrument or liable to deliver such movable property or to account for it to the judgment-debtor (hereafter referred to as "the Garnishee") calling upon him within the period specified in the notice either to pay into Court the said debt or amount payable under the said negotiable instrument or deliver into Court the said movable property, as the case may be, or so much thereof as may be sufficient to satisfy the decree or order and the cost of execution or to appear before the Court and show cause why he should not be ordered to do so.

The notice shall be served on the Garnishee and, if the Court so directs on the judgment-debtor also. The notice shall be served eight clear days before the returnable date thereof:

Provided that, subject to the proviso to Rule 46-C, if by any law for the time being in force, the

jurisdiction to adjudicate upon the debt or claim relating to the negotiable instrument or movable property in respect of which the application aforesaid is made is conferred on a Civil Court other than the execution Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court shall transfer the case to the competent Court and on such transfer the Court to which the case is transferred will deal with it in the same manner as if it had been originally instituted in that Court.

*Explanation.*—When the District Court itself is the competent Court it may deal with the case in the same manner as if it had been originally instituted in that Court.

(2) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the Garnishee is indebted to the judgment-debtor or that the property belongs to the judgment-debtor.

46-B. Where the Garnishee does not within the time specified in the notice or within such time as the Court may allow to pay into Court the said debt or the amount payable under the said negotiable instrument or does not deliver into Court the said property or so much of the debt or amount or property as is sufficient to satisfy the decree or order and the cost of the execution or does not appear and show cause in answer to the notice, the Court may order the Garnishee to comply with the terms of such notice or pass such other order as it may deem fit.

46-C. If the Garnishee disputes his liability, the Court instead of making such order may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order upon the notice as it may think fit:

Provided that if the amount of the debt or the amount payable under the negotiable instrument or the value of the property in respect of which the application aforesaid is made exceeds the pecuniary jurisdiction of the Court, the Court shall send the execution case to the District Court to which the said Court is subordinate and thereupon the District Court or any other competent Court to which it may be transferred by the District Court will deal with it in the same manner as if it had been originally instituted in that Court.

46-D. If the Garnishee appears in answer to the Garnishee notice shows cause to the satisfaction of the Court, the notice shall be dismissed and upon such dismissal the attachment ordered under rule 46, 51 or 52 of this Order shall stand raised and the prohibitory order, if any, shall stand discharged.

46-E. Whenever in the course of proceedings against the Garnishee it is alleged or appears to the Court to be probable that some person other than the judgment-debtor is or claims to be entitled to the debt attached or the amount payable under the negotiable instrument or the property attached or claims to have a charge or lien upon or interest in such debt or amount or

property the Court may order such third person to appear before it and state the nature of his claim with particulars thereof and, if necessary, prove the same.

46-F. After hearing such third person and any other person who may subsequently be ordered to appear, or in case of such third person or other person not appearing when ordered, the Court may pass such order as is provided under Rule 46-B, 46-C or 46-D or such other order or orders upon such terms, if any, with respect to the lien or charge or interest if any of such third or other person as it may deem fit and proper including an order that any question or issue necessary for determining the validity of the claim of the third or other person be tried as though it were an issue in a suit.

46-G. (a) An order made by the Court under Rule 46-B, 46-C or 46-F against the Garnishee shall be executable as if it were a decree of the Court in favour of the decree-holder.

(b) When money or negotiable instrument or property is received in Court as a result of an order under Rule 46-B, 46-C or 46-F above, the money shall not be paid and further steps in execution in respect of the negotiable instrument or property shall not be taken till the time for filing an appeal against the said order is over and whether an appeal is filed, till further orders of the Appellate Court.

46-H. Any payment or delivery made by a Garnishee in compliance with a Garnishee notice or order made against him under Rule 46-B, 46-C or 46-F of this Order or any money or property realised in execution of an order under these Rules shall be a valid discharge of the Garnishee's liability to the judgment-debtor and to any other person or persons ordered to appear under Rule 46-E or 46-F of this order for the amount paid or levied or property delivered or property realised in execution, although the decree in execution of which the application under Rule 46-A was made, or the order passed in the proceedings on such application may be set aside or reversed.

46-I. Where a debt due by a firm to the judgment-debtor has been attached it may be proceeded against under Rules 46-A to 46-H of this Order in the same manner as in the case of an ordinary Garnishee, and provisions of order XXX of this Code shall, so far as applicable, apply to such proceedings although one or more partners of such firm may be resident outside the jurisdiction of the Court: Provided that any person having the control or management of the partnership business or any partner of the firm who is within the jurisdiction of the Court is served with Garnishee notice. An appearance by any partner pursuant to such notice shall be sufficient appearance by the firm.

46-J. The costs of any application made under Rule 46-A of this order and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court.

46-K. Any order made under Rule 46-B, 46-C, 46-F or 46-G of this Order shall be appealable as a decree.

(12) In Order XXI, rule 53, for the existing sub-rule (1) (b), substitute the following:—

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court and to any other Court to which the decree has been transferred for execution to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) (a) the holder of the decree sought to be executed, or

(b) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court, applies to the Court receiving such notice to execute the attached decree.

(13) Substitute the following sub-rule (4) for the existing sub-rule (4) of rule 53 in Order XXI:—

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court also by sending to such other Court and to any other Court to which the decree has been transferred for execution a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(14) In Order XXI, for 54 and its marginal note substitute the following as rule 54 and marginal note:—

54. (1) Where the property is immovable, the attachment of immovable property shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge, such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged.

(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) Copies of the order shall also be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be caused to be made in the revenue records, city survey records, or village panchayat records as may be required in the particular case.

(3) The order shall be proclaimed at same place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the

property and then upon a conspicuous part of the Court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate, and also, where the property is situate with cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned, and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.

(15) In Order XXI, for the existing rule 57 and its marginal note, substitute the following as rule 57 and marginal note:—

**57. Where any property has been attached in Determination of attachment.** execution of a decree and the Court for any reason passes an order dismissing an execution application, the Court shall direct whether the attachment shall continue or cease. If the Court omits to make an order and if the order dismissing the execution application is appealable the attachment shall continue till expiry of the period prescribed for filing an appeal or where appeal has been filed, till such further period as the appellate Court may direct.

(16) In Order XXI, rule 69, for the existing sub-rule (1) and the marginal note substitute the following as sub-rule (1) and marginal note [retaining sub-rule (2) and (3) as they are]:—

**69. (1) The Court may, in its discretion, Adjournment or stoppage of sale.** adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale to a specified day and hour, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of the Court-house, no such adjournment shall be made without the leave of the Court.

(17) In Order XXI, rule 75, for the existing sub-rule (2), substitute the following as sub-rule (2):—

(2) Where the crop from its nature does not admit of being stored, or where it appears to the Court that the crop shall be sold to greater advantage in an unripe state, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

(18) In Order XXI, for the existing rule 85, substitute the following rule and marginal note:—

**85. The full amount of purchase money payable, Time for payment in full of purchase money.** together with the amount required for the general stamp paper for the certificate under Rule 94, shall be paid by the purchaser into Court before the Court closes on the 15th day from the date of the sale of the property:

Provided that, in respect of the purchase money, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72:

Provided further that, if as a result of some *bona fide* mistake or miscalculation the amount deposited falls short of the full amount of the purchase money, the Court may in its discretion, allow the shortfall to be made up after fifteen days of the sale, and if the full amount of the purchase money is deposited within such time as the Court may allow, the Court may condone the delay, if it considers it just and proper to do so.

*Explanation.*—When an amount is tendered in Court on any day after 1-00 p. m. but is not accepted by the Court and is paid into Court on the next working day between 11-00 a. m. and 1-00 p. m. the payment shall be deemed to have been made on the day on which the tender is made.

(19) In Order XXI, rule 87, for the words "of the purchase money" substitute the words "of the amounts mentioned in rule 85".

(20) In Order XXI, add the following proviso at the end of sub-rule (1) Rule 92:

Provided that before confirming the sale the Court shall satisfy itself that the amount paid under Rule 85 for the purchase of general stamp paper for the certificate under Rule 94 is sufficient for the purpose in accordance with the rate in force at the time of the confirmation and may, notwithstanding anything contained in Rule 86, give the purchaser such time as it thinks fit for making good any deficiency.

(21) In Order XXI, for the existing rule 94, and its marginal note, substitute the following as rule 94 and marginal note:—

**94. Where a sale of immoveable property has become absolute, the Court shall grant certificate to purchaser.** specifying the property sold, the amount of the purchase money and the name of the person who at the time of sale is declared to be the purchaser.

Such certificate shall bear date the day on which the sale became absolute.

(22) Substitute the following sub-rule (2) for the existing sub-rule (2) of rule 98 in Order XXI:—

(2) Where upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment debtor or by some other person at his instigation or on his behalf, or by any transferee where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the Civil prison for a term which may extend to thirty days. The Court may also order the person or persons whom it holds responsible for such resistance or obstruction to pay jointly or severally in addition to costs, reasonable compensation to the decree-holder or the purchaser, as the case may be, for the delay and expenses caused to him in obtaining possession. Any order made under this rule shall have the same force and be subject

to the same conditions as to appeal or otherwise as if it were a decree.

(23) Add the following proviso to rule 100 in Order XXI : —

"Where it is determined that the application is made by person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed, the Court shall dismiss the application under sub-rule (a) above."

(24) Add the following proviso to rule 101 of Order XXI : —

"Provided that when the Court is not competent to decide such question due to want of pecuniary jurisdiction the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge, shall deal with it in the same manner as if the case had been originally instituted in that Court."

(25) Delete rule 102 in Order XXI.

#### Order XXV

(1) In Order XXV, after the existing rule 2, add the following rule with marginal note as new rule 3 and its marginal note: —

<p>3. (1) Where any plaintiff has for the purpose of being financed in the suit transferred or agreed Power to implead and demand security from third person financing litigation.</p>	<p>to transfer any share or interest in the property in the suit to a person who is not already a party to the suit, the Court may order such person to be made a plaintiff to the suit if he consents, and may either of</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

its own motion or on the application of any defendant order such person, within a time to be fixed by it to give security for the payment of all costs incurred and likely to be incurred by any defendant. In the event of such security not being furnished within the time fixed, the Court may make an order dismissing the suit so far as his right to, or interest in the property in suit is concerned, or declaring that he shall be debarred from claiming any right to or interest in the property in suit.

(2) If such person declines to be made a plaintiff, the Court may implead him as a defendant and may order him, within a time to be fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any other defendant. In the event of such security not being furnished within the time fixed, the Court may make an order declaring that he shall be debarred from claiming any right to or interest in the property in suit.

(3) Any plaintiff or defendant against whom an order is made under this rule may apply to have it set aside and the provisions of sub-rule (2) and (3) of rule 2 shall apply *mutatis mutandis* to such application.

#### Order XXXIII

(1) In Order XXXIII, rule 1 for Explanation I below rule 1, substitute the following Explanation I: —

*Explanation I.* — A person shall be deemed to be an indigent person if he is not possessed of means exceeding rupees one thousand in value or where he is possessed of means exceeding one thousand rupees in value, the same are not sufficient to enable him to pay fees prescribed by law for the plaint.

For the purposes of this Explanation the means which a person is possessed of shall be deemed not to include property exempt from attachment in execution of a decree and the subject-matter of the suit.

(2) In Order XXXIII, for the existing rule 17 and its marginal note substitute the following rule and the marginal note: —

<p>17. Any defendant, who desire to plead a set off or counter-claim, may be allowed to set up Defence by an indigent person.</p>	<p>such claim as an indigent person, and the rules contained in this order shall so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint, and if he is required to issue a third party notice, the third party notice shall also be deemed to be a plaint for the purpose of this rule.</p>
-----------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(3) In Order XXXIII, after the existing rule 19 add the following rule with marginal note as new rule 19 and the marginal note: —

<p>19. No cause, suit or matter commenced or A paper not to compromise suit without leave of Court.</p>	<p>carried on by a pauper plaintiff or defendant shall be compromised on any account whatsoever without leave first had obtained from the Judge in Chambers or the Court.</p>
---------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### Order XXXIV

(1) In Order XXXIV, after the existing rule 14, insert the following rule with marginal note as new rule 14A and its marginal note: —

<p>14A. (1) Notwithstanding anything hereinbefore contained, where the sale of any mortgaged Special provisions regarding a composite decree combining in itself a preliminary as well as a final decree.</p>	<p>property is decreed under any composite decree which combines in itself a preliminary as well as a final decree as per compromise between the parties or as required or permissible under any special law or under an order, award or adjudication which is deemed to be a decree</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

of a Civil Court, or which is required to be executed as a decree or as if it is a decree of a Civil Court, and the judgment-debtor (mortgagor), before the day fixed in that behalf or at any time before the confirmation of the sale made in pursuance of such decree, order, award or adjudication, makes payment into Court of all amounts due from him to the decree-holder (mortgagee) on that date, under the said decree, order, award or adjudication, including all subsequent costs, charges, expenses and interest, and also deposits in the Court for payment to a purchaser a sum

equal to five per cent of the amount of the purchase money paid into Court by the purchaser, the Court shall, on application made by the judgment-debtor (mortgagor) in this behalf, set aside the sale and mark the decree, order, award or adjudication as satisfied, and pass an order:—

(a) ordering the decree-holder (mortgagee) to deliver up to the judgment-debtor (mortgagor) or his nominee, all documents in his possession or power relating to the mortgaged property, and, if, necessary.

(b) ordering him to re-transfer the mortgaged property to the judgment-debtor (mortgagor) or his nominee at his cost free from the mortgage and from all encumbrances created by the decree-holder (mortgagee), or any person claiming under him, or where the decree-holder (mortgagee) claims by derived title, by those under whom he claims, and also if necessary.

(c) ordering him to put the judgment-debtor (mortgagor) or his nominee in possession of the property.

(2) Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase money paid into Court by him together with a sum equal to five per cent thereof.

(3) The Court may, upon good cause shown and upon terms to be fixed by the Court, from time to time at any time before the sale is confirmed, extend the time fixed for the payment of the amount due under the decree, order, award or adjudication, including all subsequent costs, charges, expenses and interest.

#### Order XXXVII

(1) In Order XXXVII, *substitute* the following sub-rule (1) for the existing sub-rule (1) of rule 1:—

1. (i) This order shall apply to the following Courts, namely:—

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) such Courts as may be specifically empowered in this behalf by the High Court from time to time by a Notification in the *Official Gazette*.

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the *Official Gazette*, restrict the operation of this Order only to such categories or suits as it deems proper and may also from time to time, as the circumstances of the case may require, by subsequent notification in the *Official Gazette*, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

#### Order XXXVIII

(1) In Order XXXVIII, Rule 6 for the existing sub-rule (2) *substitute* the following as sub-rule (2):—

(2) Where the defendant shows such cause or furnishes the required security or gives an undertaking to the Court to do or not to do a thing, and the property specified or any portion of it has

been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

#### Order XXXIX

(1) In Order XXXIX, *after* the existing rule 10, *add* the following rule with marginal note as new rule 11 and its marginal note:—

<p>11. (1) Where the Court orders any party to a suit or proceeding to do or not to do a thing</p>	<p>during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any</p>
<p><i>Procedure on parties defying orders of Court and committing breach of undertaking to the Court.</i></p>	<p>default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.</p>

default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.

(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court:

Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed.

#### Order XL

(1) In Order XL, for the existing rule 4 and its marginal note, *substitute* the following as rule 4 and marginal note:—

4. (1) If a Receiver fails to submit his account

<p><i>Enforcement of Receiver's duties.</i></p>	<p>at such periods and in such form as the Court directs, the Court may order his property to be attached until he duly submits his accounts in the form ordered.</p>
-------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------

(2) The Court may, at the instance of any party to any suit or proceeding in which a Receiver has been appointed or of its own motion, at any time not beyond three years from the date of his discharge by the Court, make an enquiry as to what amount, if any, is due from the Receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the Receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the Receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post pre-paid for acknowledgement to the surety, if any, for the Receiver; but the cost of his appearance shall be borne by the surety himself, unless the Court otherwise directs:





**Order XLI**

(1) *Substitute* the following rule as rule 1 for the existing rule 1 in Order XLI: —

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded:

Provided that where two or more suits have been tried together and common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that Judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

(2) The memorandum shall set forth, concisely and under distinct heads, the contents of the memorandum, grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit:

"Provided that the Court may dispense with the deposit or security where it deems fit to do so for sufficient cause."

(4) The appellant shall file along with the memorandum of appeal as many copies thereof on plain paper as there are respondents for being served on the respondents along with the notice of appeal:

Provided that the Court in its discretion may permit the appellant to file the necessary number of copies of the memorandum of appeal after the appeal is admitted, within such time as the Court may grant in this behalf.

(2) In Order XLI, after the existing rule 18, insert the following rule with marginal note as new rule 18A and its marginal note: —

18A. Where after the admission of an appeal the rules or the special directions of the Court require the appellant to take any steps in the prosecution of the appeal before a fixed date, and where after due notice intimating the steps to be taken the appellant fails to take such steps within the time prescribed by the rules or allowed by the Court, the Court may direct the appeal to be dismissed for want of prosecution or may pass such other order as it thinks fit.

(3) In Order XLI, for the existing rule 19 and its marginal note, *substitute* the following as rule 19 and marginal note: —

19. Where an appeal is dismissed under rule 11, sub-rule (2) or rule 18A or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or in taking the necessary steps in the prosecution of the appeal or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

(4) In Order XLI, rule 31, *substitute* a colon for the full stop appearing at the end of the rule and *add* thereafter the following proviso: —

Provided that where the judgment is pronounced by dictation to a short-hand writer in open Court the transcript of the judgment so pronounced shall, after making such corrections therein as may be necessary, be signed by the Judge or the Judges concerned and shall bear the date of its pronouncement.

(5) In Order XLI, rule 35 for the existing sub-rule (2) *substitute* the following as sub-rule (2): —

(2) The decree shall contain the number of the appeal the names and descriptions of the appellant and the respondent, their registered addresses, and a clear specification of the relief granted or the adjudication made.

(6) In Order XLI, after the existing rule 38, *add* the following rule and marginal note as new rule 38 and its marginal note: —

38. (1) The registered address filed under Order VI, rule 14A shall hold good during all appellate proceedings arising out of the original suit or petition, subject to any alteration under sub-rule (3) hereof.

(2) Every memorandum of appeal shall state the registered address given by the opposite parties in the Court below, and notices and processes shall issue from the Appellate Court to such addresses.

(3) Sub-rules (2) and (4) (i) and (ii) of rule 14-A of Order VI shall apply, so far as may be, to appellate proceedings.

**Order XLIII**

In Order XLIII, rule 1, for the existing clause (r) *substitute* the following as clause (r): —

(r) An order under rule 1, rule 2, rule 4, rule 10 or rule 11 of Order XXXIX.

**Order XLV**

(1) Order XLV, after sub-rule (2) of rule 2 insert the following as sub-rule (3): —

(3) (i) Whoever desires to appeal to the Application to Supreme Court shall apply by

Court whose  
decree is com-  
plained of,

petition to the Court whose de-  
cree is complained of.

(ii) Notwithstanding anything contained in sub-rule (1) a party desiring to appeal to the Supreme Court may apply orally immediately after the pronouncement of the Judgment by the Court, and the Court may grant or refuse leave to the party to appeal to the Supreme Court or direct the party to file a petition as required by sub-rule (1):

Provided, however, that if an oral application for leave under sub-rule (2) is made and rejected, no written petition under sub-rule (1) shall lie.

(2) In Order XLV, rule 3, for the existing sub-rule (2) *substitute* the following as sub-rule (2):—

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted, unless it thinks fit to refuse the certificate.

(3) In Order XLV, after the existing rule 7, *insert* the following rule with marginal note as new rule 7A and its marginal note:—

7A. No such security as is mentioned in clause (a) of sub-rule (1) of rule 7 above shall be required from the Union of India or a State Government or where Government has undertaken the defence of the suit from any public officer sued in respect of an act alleged to have been done by him in his official capacity.

(4) In Order XLV, for the existing rule 15 and its marginal note, *substitute* the following as rule 15 and marginal note:—

15(1) (a) Any decree passed or order made by the Supreme Court in exercise of the appellate jurisdiction including any order of the Supreme Court as to the costs of, and incidental to any proceedings in that Court shall be enforceable in accordance with the provisions of law for the time being in force relating to the enforcement of the decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred.

(b) The costs incurred in the High Court as incidental to the Supreme Court Appeal including the costs in the application for leave to appeal to the Supreme Court shall be recoverable, where awarded, by execution of the order of the High Court in the same manner in which the decree or order of the High Court from which the appeal to the Supreme Court was preferred or sought to be preferred would have been executed.

(2) Unless the Supreme Court otherwise directs no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent

in a case, where such opposite party or respondent did not appear either at the hearing of the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court but such order shall have the same force and effect as if it had been made before the death took place.

#### Order XLVI

In Order XLVI, after the existing rule 7 *add* the following rule with marginal note as new rule 8 and its marginal note:—

Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this order.

#### Order XLVII

(1) In Order XLVII, for the existing rule 5 and its marginal note, *substitute* the following as rule 5 and marginal note:—

Where the Judge, or judges, or any one of the Judges, who passed the decree or made the order a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of two months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same:

Provided that if in the case of a decree or order passed by a Division Bench of two or more Judges of the High Court sitting at any place in the State of Maharashtra all the said Judges are not available for sitting together at one place when the review application is ready for hearing, the application may be heard by a Division Bench of two or more Judges, at least one of whom, if available, should be the Judge who had passed the decree or order a review of which is applied for.

(2) In Order XLVII, after the existing rule 9, *add* the following rule with marginal note as new rule 10 and its marginal note:—

10. Rule 38 of Order XLI shall apply so far as may be to proceedings under this Order.

#### Order XLVII-A

After the existing Order XLVII, *add* the following Order with heading as new Order XLVII-A and its heading:—

#### Order XLVII-A

##### REVISION

1. Rule 38 of Order XLI, shall apply, so far as may be to proceedings under section 115 of this Code.

**Order XLVIII**

In Order XLVIII, rule 1, for the existing sub-rule (2) and its marginal note, *substitute* the following as sub-rule (2) and marginal note:—

(2) The Court-fee chargeable for service of the Costs of service. process of the Court shall, except as provided for in sub-rule (2) of rule 1 of Order IV be paid when the process is applied for or within such time as may be fixed by the Court.

**Order XLIX**

(1) In Order XLIX, for the existing rule 3 and its marginal note, *substitute* the following as rule 3 and marginal note:—

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary civil jurisdiction, namely:—

- (1) rule 19A, Order V,
- (2) rule 10, clauses (b) and (c) of rule 11 and rule 14A of Order VI.
- (3) rule 14A of Order VI,
- (4) rule 3 of Order X,
- (5) rule 2 of Order XVI,
- (6) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII,
- (7) rules 1 to 8 (both inclusive) of Order XX,
- (8) rule 72A of Order XXI,
- (9) rule 7 of Order XXXIII (so far as relates to the making of a memorandum), and
- (10) rule 38 of Order XLI;

and rules 31 and 35(4) of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

(2) In Order XLIX, after rule 3 as substituted above, *add* the following rule with marginal note as new rule 4 and its marginal note:—

Where on a memorandum of appeal presented Powers of the Registrar to the High Court within the tear of the High Court to accept court fees after the presentation of the appeal. time prescribed for the same the whole or any part of the fee prescribed by the law for the time being in force relating to Court-fees has not been paid, the Registrar may, in his discretion, allow the appellant to pay the whole or part, as the case may be, of such Court-fee after the presentation of the memorandum of appeal, and may admit the appeal to the register even though the Court-fee or part of it may have been paid after the time prescribed for the presentation of the appeal.

Delete form No. IV-A.

Add the following note in form Nos. 1, 2, 3, 4, 5 and 6 in appendix B:—

*Notice.* — Also take notice that in default of your filing an address for service on or before the date mentioned you are liable to have your defence struck out.

In Appendix B, for the existing Form No. 10, *substitute* the following as Form No. 10:—

No. 10

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT

(Order 5, rule 23)

(Title)

Read proceeding form the service on forwarding for in Suit No. of 19 of that Court.

Read Serving Officer's endorsement stating that the and proof of the above having been duly taken by me on the oath of and

it is ordered that the be returned to the with a copy of this proceeding.

I hereby declare that the said summons on has been duly served.

Judge.

*Note.* — This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

In Appendix E, for the existing Form No. 38, *substitute* the following as Form No. 38:—

No. 38

CERTIFICATE OF SALE OF LAND

(Order 21, rule 94)

(Title)

This is to certify that has been declared the purchaser for Rs. at a sale by public auction on the day of 19, of in execution of decree in this suit, and that the said sale has been duly confirmed by this Court.

Given under my hand and the seal of the Court, this day of 19

Judge.

In Appendix G, in Forms Nos. 2 and 3, the following shall be *added* as a note:—

*Note.* — Unless appropriately altered, the printed form binds the surety only to an immediate appeal from the decree mentioned in the bond, and does not cover any obligation in respect of any further appeal.

And further, in Form No. 3 of the said Appendix G, for the opening words "This security bond on stay of execution of decree executed by

witnesseth—",

*Substitute* the following:—

"This security bond, on order being made for execution of decree, executed by

witnesseth—".

## APPENDIX 'H'

In Appendix H, for the existing Form No. 11 substitute the following as Form No. 11: —

No. 11

**NOTICE TO MINOR DEFENDANT AND  
GUARDIAN**

(Order 32, rule 3)

(Title)

To

(1) ..... (Natural Guardian/  
/Legally appointed Guardian/Person taking care of  
the minor).

Whereas an application (as per the annexed copy) has been presented on behalf of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant (here enter the name of the minor defendant) ..... and whereas the plaintiff has proposed in his application that you (here enter the name of the proposed guardian) ..... should be appointed as such guardian you the said proposed guardian are hereby required to take notice that, unless, you appear before this Court within ..... days from the service of this notice upon you and express your consent to such appointment or an

application is made to this Court to appoint some other person as guardian of the minor for the suit, the Court will proceed to appoint such person as it deems proper as the guardian of the minor for the purposes of the said suit.

Given under my hand and the seal of this Court,  
this       day of       19       .

Judge.

No. 14

In Appendix H, in Form No. 14, for the existing note at the foot of the Form substitute the following note: —

*Note.* — Where there are numerous plaintiffs or numerous defendants, the names of all the plaintiffs or all the defendants, as the case may be, should be entered in the register.

By Order,

D. B. KHADE,  
Prothonotary & Senior Master.

High Court, Bombay,

Dated this 5th day of September 1983.

S. M. DAUD,  
Registrar